

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS MICHAEL WEST,	:	
Petitioner,	:	
v.	:	Case No. 3:18-cv-361
LYNEAL WAINWRIGHT, Warden,	:	JUDGE WALTER H. RICE
Marion Correctional Institution,	:	
Respondent.	:	

DECISION AND ENTRY OVERRULING PETITIONER'S OBJECTIONS (DOC. #12) TO UNITED STATES MAGISTRATE JUDGE'S NOVEMBER 2, 2018, ORDER (DOC. #10); ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #14); OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. #15); DISMISSING WITHOUT PREJUDICE PETITION FOR WRIT OF HABEAS CORPUS (DOC. #1); DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; TERMINATION ENTRY

Petitioner Thomas West seeks to challenge his state conviction. However, his "Affidavit in the Nature of a Petition for Writ of Habeas Corpus," Doc. #1, did not comply with Habeas Rule 2. On November 2, 2018, United States Magistrate Judge Michael R. Merz granted him leave to proceed *in forma pauperis* and directed him to file an Amended Petition. He denied Petitioner's request for state court records and demand for a decree nisi. Doc. #10. Instead of filing an

Amended Petition, Petitioner filed Objections to the Magistrate Judge's Order, Doc. #12, and the undersigned recommitted the matter to Magistrate Judge Merz.

On November 28, 2018, Magistrate Judge Merz issued a Report and Recommendations, Doc. #14. Petitioner maintains that his case was not brought pursuant to 28 U.S.C. § 2254, but pursuant to a right enumerated in Article II of the Ordinance of the Northwest Territory. Magistrate Judge Merz rejected Petitioner's claim that rights under the Ordinance survived the adoption of the United States Constitution and that he has the right to have his petition adjudicated in a federal court sitting as a "common law" court. Because federal courts are courts of limited jurisdiction and the power to issue a writ must be conferred by statute, Magistrate Judge Merz found that this Court lacked jurisdiction to consider a petition brought to enforce rights purportedly guaranteed by the Northwest Ordinance. Accordingly, Magistrate Judge Merz recommended that the Petition be dismissed without prejudice for lack of jurisdiction and that Petitioner be denied a certificate of appealability and leave to appeal *in forma pauperis*.

Petitioner then filed Objections to the Report and Recommendations. Doc. #15. Based on the reasoning and citations of authority set forth by Magistrate Judge Merz in his Report and Recommendations, Doc. #14, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety. Petitioner's Objections to the November

2, 2018, Order, Doc. #12, and his Objections to the Report and Recommendations, Doc. #15, are meritless and are OVERRULED.

The "Affidavit in the Nature of a Petition for Writ of Habeas Corpus," Doc. #1, is DISMISSED WITHOUT PREJUDICE to refiling a Petition that fully complies with Habeas Rule 2.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: December 12, 2018



WALTER H. RICE
UNITED STATES DISTRICT JUDGE